IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6784 of 2002
with
Special Civil Application
Nos. 6787, 6790, 6791 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIPINCHANDRA GAMANLAL CHOKSHI
Versus
COMPETENT AUTHORITY

Appearance:
Mr.S.H. Sanjanwala, Senior Advocate, with
MR RS SANJANWALA for the Petitioners in all matters.
MS MANISHA LAVKUMAR, Advocate, for Respondent No. 1, in all matters.
Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 2-3 in all matters.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

1. Special Civil Application No.6678 of 2002 was filed by one Mr.Bipinchandra Gamanlal Chokshi, and three others. All the four petitioners in the said Special Civil Application No.6678 of 2002, belong to one family. They filed the said writ petition, being Special Civil Application No.6678 of 2002, inter alia, seeking the following reliefs :-

The petitioners have prayed that, since the order of detention passed against Mr.Bipinchandra Gamanlal Chokshi, petitioner No.1, under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("COFEPOSA", for short) is revoked by the Government on lifting of Emergency, the Act in question, being the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 ("SAFEMA", for short), is not applicable to any of the petitioners and, therefore, the notices dated 23.8.2001, at Annexure 'O' Collectively, issued under Section 6 of SAFEMA are bad and illegal, and void ab initio, and the said notices may be quashed and set aside. It is also prayed that the notices issued under Section 6, at Annexure 'O' Collectively to the petition, are without jurisdiction and the same are issued in a mala fide manner. It is also prayed in the petition, that the detention order dated 11.6.1976, at Annexure 'H' to the petition, passed against Mr.Bipinchandra Gamanlal Chokshi, petitioner No.1, may be quashed and set aside and the notices issued under the SAFEMA pursuant to the aforesaid detention order also may be quashed and set aside. It is also prayed that the final order issued by the Competent Authority under Section 7 of the SAFEMA, which is at Annexure 'E' to the petition, also may be quashed and set aside.

2. For the reasons recorded in the judgment dated 18th August, 2004, this Court disposed of Special Civil Application No.6678 of 2002 with the following directions :-

" ... ...

It is required to be noted that, in the instant

case, the petitioners have already availed of the alternative remedy on their own and the Appellate Tribunal is seized of the matter. It is not in dispute that the Appellate Tribunal is seized of the matter and perhaps, the appeal is not decided in view of the pendency of this petition. It is also required to be noted that, in view of the interim order granted in the Letters Patent Appeal, which is preferred by petitioner No.1, even it is not open for the authority to proceed further for the purpose of forfeiting the property of the petitioners on the basis of the order passed by the Competent Authority as long as the Letters Patent Appeal is pending. It is, no doubt, true that, in a given case, even if alternative remedy is available, this Court, under Article 226 of the Constitution of India, can, still, entertain the petition, without asking the petitioners to exhaust the alternative remedy and, in a given case, this Court can still exercise the power by entertaining the petition, even though, statutory remedy may be available. However, these are self-imposed restrictions and so far as the facts of the present case are concerned, it is not in dispute that the petitioners themselves have chosen to exhaust the alternative remedy by approaching the Appellate Tribunal and the said appeal is pending for final adjudication. In my view, this Court should not encourage these parallel proceedings undertaken by petitioner No.1, one before this Court and another before the Appellate Tribunal. Once the Appellate Tribunal is seized of the matter, in my view, it would not be proper to exercise powers under Article 226 of the Constitution of India. As stated earlier, availability of alternative remedy and resorting to alternative remedy, both stand on a different footing. In the instant case, it is not in dispute that the petitioners have already availed of the alternative remedy. Under the circumstances, when the Appellate Tribunal under the Act is seized of the matter, all these points, which are canvassed before this court, can, very well, be canvassed before the Appellate Tribunal. Under these circumstances, I would not like to exercise my extraordinary jurisdiction, especially when alternative remedy is availed of by the petitioners by approaching the Appellate Tribunal and the Appellate Tribunal being seized of the matter, it would not be proper for this Court to exercise the powers

under Article 226 of the Constitution of India. The points which are canvassed during the course of the arguments can, naturally, be canvassed before the Appellate Tribunal and, in fact, if the decision by the Appellate Tribunal is against the petitioners, naturally, the remedy of approaching this Court is always available to the petitioners under Article 226 of the Constitution of India. Under these circumstances, without examining the merits of the contentions raised by Mr.Sanjanwala, as indicated in the order, this petition, in my view, is required to be rejected on the ground of alternative remedy being availed of by the present petitioners and especially when the Appellate tribunal is seized of the matter. The Appellate Tribunal has got wider jurisdiction to appreciate the facts of the case and it can decide even the question of facts as well as of law.

15. Under these circumstances, this petition is rejected on the grounds, as indicated in this order. It is clarified that this Court has not examined the contentions, which are raised by Mr.Sanjanwala, and which contentions have been incorporated in the present order, on merits. It is for the Appellate Tribunal to decide all these points, if the same are canvassed at the time of hearing of the appeal. However, so far as the challenge to the detention order of petitioner No.1 is concerned, the same is negatived.

16. At this stage, it is also required to be noted that, so far as petitioners 2 to 4 are concerned, they are subjected to order under Section 7 of SAFEMA in view of the detention order passed against petitioner No.1. As long as Letters Patent Appeal of petitioner No.1 is pending, wherein he has challenged the detention order, naturally, the Authority cannot proceed against petitioners 2 to 4 for forfeiting the properties in view of the order passed under SAFEMA, as, the foundation of passing the said orders against petitioners 2 to 4 is the detention order passed against petitioner No.1.

At this stage, Mr.Sanjanwala, learned Senior Advocate for the petitioners, submitted that since, in the present Special Civil Application, there is an interim relief, the petitioners had not pressed for interim relief before the

Appellate Tribunal. In this behalf, he has also relied upon the interim order of the Appellate Tribunal for the purpose of substantiating the said say. Considering the fact that the interim relief is in operation since long from the time of admitting this petition, and considering the fact that the Appellate Tribunal is seized of the matter, the interim relief is extended till the Appellate Tribunal disposes of the appeal of the present petitioners. It is hoped that, since the proceedings are very old, the Appellate Tribunal may dispose of the said appeal expeditiously, preferably by 31st December, 2004.

17. Subject to what is stated above, the petition is disposed of. Rule is discharged. No order as to costs.

... ..."

3. This group of petitions is also filed by the said Mr.Bipinchandra Gamanlal Chokshi and others. The said Bipinchandra Gamanlal Chokshi is petitioner No.1 in all the petitions in this group (except in Special Civil Application No.6787 of 2002, wherein Bipinchandra Gamanlal Chokshi HUF is petitioner No.1.). The co-petitioners in this group of petitions are the family members of the said Bipinchandra Gamanlal Chokshi. This group of petitions also involves similar facts. The point of law involved is also the same.

The conclusions reached by this Court in the said judgment dated 18.8.2004, based on the factual aspect in the said petition, being Special Civil Application No.6678 of 2002, and the directions imparted by this Court therein, are as follows :-

(i) The petitioners therein have already availed of the alternative remedy on their own and the appellate tribunal is seized of the matter;

(ii) In view of the interim order granted in the Letters Patent Appeal preferred by petitioner No.1 therein, it is not open for the authority to proceed further for the purpose of forfeiting the property of the petitioners on the basis of the order passed by the Competent Authority so long as the LPA is pending;

(iii) It is not advisable to encourage parallel proceedings, one before this Court and another before the appellate Tribuna;

(iv) Availability of alternative remedy and resorting to alternative remedy stand on a different footing;

(v) Since the appellate tribunal is seized of the matter, all the points canvassed before this Court can very well be canvassed before the Appellate Tribunal;

It is clarified in the said judgment that the contentions raised by the learned Advocate for the petitioners have not been examined by this Court on merits;

It is also observed that if the said points are canvassed before the Appellate Tribunal, it is for the Appellate Tribunal to decide the same;

This Court also observed that the Appellate Tribunal may dispose of the appeal, preferably by 31st December, 2004;

If the decision of the Appellate Tribunal is against the petitioners, naturally, the remedy of approaching this Court under Article 226 of the Constitution of India, is always available to the petitioners;

A n d

(vi) Considering the fact that the interim relief was in operation since long from the time of admitting the said petition, interim relief initially granted therein is extended till the appellate tribunal disposes of the appeal of the petitioners therein.

4. In the above view of the matter, this group of petitions is also disposed of on the same lines. This group of petitions is also accordingly disposed of in view of the same reasoning in Special Civil Application No.6678 of 2002, and also with the directions / clarifications as set out in paragraph 3(i) to 3(vi) hereinabove.

This group of petitions is also accordingly disposed of. Rule is discharged. No costs.

19th August, 2004 (P.B. Majmudar, J.)

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(apj)